1982

Utah County v. Russell Olsen Brown et al : Brief of Respondent

Utah Supreme Court

IN THE SUPREME COURT OF THE

STATE OF UTAH

UTAH COUNTY, Plaintiff and Respondent, vs. RUSSELL OLSEN BROWN, FAUN V. GAMMON, LUCILLE GAMMON, JOYCE GAMMON SWAPP and NORMA GAMMON BROWN, Defendants and Appellants.	Case No. 18358

BRIEF OF APPELLANTS

Appeal From Judgment of the Fourth Judicial District Court of Utah County, Honorable Allen B. Sorensen, Judge

M. DAYLE JEFFS
Jeffs and Jeffs
90 North 100 East
P. O. Box 683
Provo, Utah 84601

Attorneys for Defendants and Appellants

Lynn W. Davis
Deputy County Attorney
County Building
Provo, Utah 84601

Attorney for Plaintiff and Respondent

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BRIEF OF RESPONDENT

APPEAL FROM JUDGMENT OF THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY, HONORABLE ALLEN B. SORENSEN, JUDGE

LYNN W. DAVIS
Deputy Utah County Attorney
Utah County Building
51 South University Avenue
Provo, Utah 84601

Attorney for Plaintiff and Respondent

M. DAYLE JEFFS
Jeffs and Jeffs
90 North 100 East
P.O. Box 683
Provo, Utah 84601

Attorney for Defendants and Appellants

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CASES CITED

STATUTES CITED

LYNN W. DAVIS
Deputy Utah County Attorney
Attorney for Plaintiff-Respondent
51 South University Avenue
Provo, Utah 84601
Telephone: 373-5510, ext. 220

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BRIEF OF RESPONDENT

NATURE OF THE CASE

This is a condemnation proceeding initiated by Utah County, a body corporate and politic. As a subdivision of the State, Utah County inherently has the power of eminent domain. The parties to this appeal constitute five (5) of the sixteen defendants. All other defendants had long prior to trial settled with plaintiff-respondent. At the trial of the matter, the parties stipulated that the value of the property being condemned for

road purposes had a value of $8,750.00. The matter was submitted to the trial Court on the narrow issue of the amount of interest to which the defendants were entitled.

DISPOSITION IN THE LOWER COURT

The trial Court ruled that the condemning authority was not required to pay interest on the funds deposited with the Clerk of the Court and allowed interest only on the excess of said deposit.

RELIEF SOUGHT ON APPEAL

Plaintiff-respondent seeks an affirmation of the District Court's decision and findings which denied appellants interest on funds deposited with the Court.

STATEMENT OF FACTS

On June 1, 1978, plaintiff-respondent commenced proceedings in eminent domain against defendants-appellants and other defendants to condemn a strip of ground 50 feet wide by 500 feet long between 1000 West and 1100 West on 1st South in Provo City, Utah, for the purpose of establishing a road to county property lying west of the projected road (R. 3-7). On June 8, 1978, defendants-appellants were served with Summons and Complaint and a Motion for Order of Immediate Occupancy (R. 16, 18, 20, 22).

A hearing on the Motion for Order of Immediate Occupancy was held on June 16, 1978, (R. 51). Judge David Sam entered an

Order of Immediate Occupancy on June 19, 1978, (R. 52-53). Pursuant to said Order, plaintiff-respondent deposited $6,300.00 with the Clerk of the Court. No defendants voiced objection either to the amount of funds ordered by the Court to be deposited with the Clerk of the Court, or the occupancy of the premises.

At the date set for the trial of the matter, the parties appeared in Court through counsel and stipulated that the value of the property and the right-of-way to the property of these defendants-appellants taken by the condemnation proceedings had a value of $9,250.00 (R. 137:2-4). The matter was submitted to the trial Court upon the stipulated value of the property taken. The only issue to be decided by the trial Court was the interest, if any, to which defendants-appellants were entitled under the condemnation proceedings.

At the hearing on January 25, 1982, counsel for the condemning authority submitted to the trial Court computations showing four theories or manners in which the Court might determine interest, if any, due to defendants-appellants and requested that the Court apply the correct procedure to the unique factual setting of this case. A copy of said computations is attached hereto as Appendix A. It is further noted that said computations were presented to the Court, not as exhibits or evidence, but for purposes of argument.

Counsel for the condemning authority argued strenuously that pursuant to 78-34-9 U.C.A., that defendants-appellants were

not entitled to interest on the sum of $6,300.00 which had been deposited with the Court; theory "A". The Court so held.

The trial Court entered its Memorandum Decision on January 26, 1982 (R. 96) ruling that defendants-appellants were not entitled to interest on the sum deposited with the Clerk of the Court on June 20, 1978. This decision was supported by 78-34-9 U.C.A., 1953, as amended, and by State v. Rohan, 28 Utah 2d 375, 503 P.2d 141.

Based upon that decision, counsel for the condemning authority submitted, and the trial Court signed, Findings of Fact, Conclusions of Law and Judgment dated February 3, 1982 (R. 97-99). The entire decreed portion of the Judgment reads:

> It is hereby ordered, adjudged and decreed that defendants, based on the authority of State v. Rohan, 28 Utah 2d 375, 503 P.2d 141, are not entitled to interest on the sum of $6,300.00 deposited with the Clerk of the Court on June 20, 1978.

On the 9th day of February, 1982, counsel for defendants-appellants filed a Motion to Amend Findings of Fact and Conclusions of Law and Judgment (R. 101-102) and a Memorandum in support thereof (R. 103). Counsel for plaintiff-respondent argued in his Memorandum in Opposition to Defendants' Motion that the Findings of Fact and Conclusions of Law and Judgment did conform to the concise Memorandum Decision of the Court (R. 117).

Plaintiff-respondent further questioned whether defendants-appellants' Motion constituted a clarification of the Memorandum

Decision, whether the Motion was brought pursuant to Rule 59(e) of the Utah Rules of Civil Procedure, whether they were relying upon Rule 52(b) to establish additional findings, or whether they were relying upon some other rules (R. 118).

The trial Court denied defendants-appellants' Motion to Amend Findings of Fact and Conclusions of Law and Judgment (R. 121).

ARGUMENT

POINT I

THE FINDINGS OF THE TRIAL JUDGE, BECAUSE OF HIS ADVANTAGED POSITION, OUGHT NOT BE DISTURBED UNLESS THE EVIDENCE CLEARLY PREPONDERATES TO THE CONTRARY.

On Appeal, this Court will not disturb the action of the trial Court unless the evidence clearly preponderates to the contrary, or the trial Court has abused its discretion, or misapplied principles of law. Eastman v. Eastman, Utah, 558 P.2d 514 (1976); Watson v. Watson, Utah, 561 P.2d 1072 (1977); and Pope v. Pope, Utah, 589 P.2d 752 (1978).

In a recent Utah case, Tanner v. Baadsgaard, Utah, 612 P.2d 345 (1980), this Court stated its well-established rule:

> Due to the prerogatives and advantaged position of the trial judge, we indulge considerable deference to his findings. Where the evidence is in dispute, we assume that he believed that which is favorable to his findings, and we do not disturb them unless it clearly preponderates to the contrary. The Court relied upon sound Utah case law: Timpanogos Highlands, Inc. v. Harper, Utah, 544 P.2d 481 (1975); Pagano v. Walker, Utah, 539 P.2d 452 (1975);

McBride v. McBride, Utah, 581 P.2d 997 (1978); Kier v. Condrack, 25 Utah 2d 139, 478 P.2d 327 (1970).

Based upon the record, certainly the trial judge did not abuse his discretion in holding that the defendants-appellants were not entitled to interest on funds deposited with the Clerk of the Court pursuant to Court Order. Said decision was supported by statute 78-34-9 U.C.A., 1953 as amended, was further supported by sound case law, State ex rel. Road Commission v. Rohan, 28 Utah 2d 375, 503 P.2d 141, and was finally supported by the evidence at trial.

The evidence was undisputed that $6,300.00 had been deposited with the Court (R. 137-138); that said amount was deposited pursuant to Court Order, (R. 51-52); that no application was made by defendants-appellants for withdrawal of said monies (R. 139). In light of the above, the Findings and Judgment ought not be disturbed.

ARGUMENT

POINT II

DEFENDANTS-APPELLANTS ARE BARRED BY THE DOCTRINE OF ESTOPPEL.

Defendants-appellants have argued that Utah County did not fully comply with 78-34-9 U.C.A., 1953 as amended, which required the deposit of 75% of the condemning authority's appraised value with the Clerk of the Court prior to occupancy. This argument is, at best, a red herring.

The Court ordered that $6,300.00 be deposited with the Court prior to occupancy. Said amount was deposited and Utah County did immediately occupy the premises, commencing on or about June 19, 1978. It is 3½ years later, at trial on January 25, 1982, that counsel raises objection for the first time to the sufficiency of said amount.

We would draw the Court's attention to the fact that the road in question had long since been completed and no objection had ever been registered concerning either the sufficiency of the Court-ordered sum or the occupancy of the premises by Utah County. Counsel's argument is defeated by the application of the doctrine of estoppel in that there was a 3½-year delay in asserting any objection and, therefore, said objection ought to be barred.

ARGUMENT

POINT III

THE TRIAL COURT DID NOT ERR IN DENYING DEFENDANTS-APPELLANTS INTEREST ON THE $6,300.00 DEPOSITED WITH THE COURT.

Defendants-appellants have relied upon Utah Department of Transportation v. Hatch, 613 P.2d 764 (1980), to demonstrate a non-meritorious point. This Court in the Hatch case held that the right to condemn does not follow automatically into a right of immediate occupancy. Utah County certainly respects that position and has never claimed an automatic right to occupancy on these premises or any other premises. Hatch is easily distinguishable from this case in that an intermediate appeal was filed on that

very question. In the instant case, no objection to the immediate occupancy was registered and no intermediate appeal was filed. The Order of Immediate Occupancy was not challenged in this case.

Certainly, defendants-appellants cannot now rely upon the narrow scope of Hatch to defeat an "Order of Immediate Occupancy" when the facts are so distinquishable.

We argue that defendants-appellants have misconstrued 78-34-9 U.C.A., 1953 as amended. They have argued that by virtue of Utah County's failure to pay 75% of the condemning authority's appraised valuation of property into the Court that, therefore, the "occupancy" was invalid, and that interest should be allowed even on the amount deposited with the Court.

We draw the Court's attention to the critical language of 78-34-9:

> The rights of just compensation for the land so taken or damaged shall vest in the parties entitled thereto, and said compensation shall be ascertained and awarded as provided in section 78-34-10 and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 8% per annum on the amount finally awarded as the value of the property and damages, from the date of taking actual possession thereof by the plaintiff or order of occupancy, whichever is earlier, to the date of judgment; but interest shall not be allowed on so much thereof as shall have been paid into court. (emphasis added)

The question of the toll of the running of interest certainly is independent of compliance with the filing of the 75% figure.

CONCLUSION

This Court has long held that a trial judge in condemnation cases is in a better position to decide the question of damages, and that his judgment will not be disturbed unless it clearly appears that he has abused his discretion. State Road Commission v. Kendall, 20 Utah 2d 356, 438 P.2d 78 (1968).

The evidence clearly demonstrated that on the day of trial, $6,300.00 was on deposit with the Clerk of the Court, that no application had been made for the disbursement of the funds, and that these defendants-appellants were the only remaining defendants in the lawsuit and that all others had long since settled.

We further point out that at the trial, there was no stipulation, written or otherwise, as to the correct legal descriptions of the condemned properties. The Judge did not rule as to the legal descriptions because they were never at issue and never presented to him in trial.

He correctly chose to rule on the very narrow issue before the Court; whether defendants were or were not entitled to interest on monies deposited with the Clerk of the Court pursuant to an Order of Immediate Occupancy.

The Memorandum Decision was a concise answer to the very narrow question presented to the Court and was supported by statute, by case law, and by the evidence presented at trial.

This Court should affirm the decision of the trial Court on this issue.

DATED and SIGNED this 13 day of August, 1982.

NOALL T. WOOTTON
Utah County Attorney

LYNN W. DAVIS
Deputy Utah County Attorney
Attorney for Plaintiff-Respondent

CERTIFICATE OF MAILING

I hereby certify that I mailed two copies of the foregoing Brief of Respondent, postage prepaid, to M. Dayle Jeffs of Jeffs and Jeffs, P.O. Box 683, Provo, Utah 84603, attorney for Defendants-Appellants, this 13 day of August, 1982.

Secretary

APPENDIX "A"

CALCULATIONS OF INTEREST

Pursuant to 78-34-9 U.C.A., $6,300 was deposited with the Clerk of the Court on June 20, 1978.

A. No interest pursuant to 78-34-9, U.C.A., allowed on available $6,300 deposited with Court --

$8,750 award - $6,300 = $2,450

$2,450 x .08 x 3.61 = $708.00

B. Property subject to eminent domain

50 ft. x 500 ft. = 25,000 square feet

Lucille Gammon --

.0259 acres x 43,560 sq. ft/acre 1,128.20 sq. ft.

Russell Olsen Brown --

.0287 acres x 43,560 sq. ft/acre 1,250.17 sq. ft.

Don L. Gammon --

.1052 acres x 43,560 sq. ft/acre 4,582.51 sq. ft

Total sq. footage 6,960.88

$\frac{6,960.88}{25,000.00}$ sq. ft. = 27.8% of total

- 27.8% x $6,300.00 = $1,750.00

$8,750 - $1,750 = $7,000 x .08% = $560.00
(June 19, 1978 - June 19, 1979)

$560.00
(June 19, 1979 - June 19, 1980)

All properties settled except defendants herein by June of 1980. $6,300.00 still on deposit.

June 19, 1980 - June 19, 1981 -		
$8,750 - $6,300 x .08	=	$ 196.00
221 days through January 25, 1982		
$196.00 ÷ 365 x 221	=	$ 119.00
		$1,435.00

C. If only $1,750.00 available through proceedings defendants entitled to $2,020.00

D. If no amounts available through proceedings $2,527.00

COMPUTATIONS OF JUDGMENT

Stipulated amount for land and interest in lands taken	$9,250.00
Amount on deposit with County Clerk	$1,750.00
Amount subject to interest	$7,500.00
Interest computed at 8% from June 20, 1978 to January 25, 1982 (3 years 220 days)	$2,161.64
Judgment Amount	$ 9,250.00
Interest	$ 2,161.64
	$11,411.64